

1 **NULLIFICATION OF THE PATIENT PROTECTION AND**
2 **AFFORDABLE CARE ACT**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jacob L. Anderegg**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the governor's programs related to the Health System Reform Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ declares the Patient Protection and Affordable Care Act null and void in the state of
14 Utah.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **ENACTS:**

21 **63M-1-2508**, Utah Code Annotated 1953

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **63M-1-2508** is enacted to read:

25 **63M-1-2508. Nullification of federal health care reform.**

26 (1) The Legislature finds that:

27 (a) the people of the several states comprising the United States of America created the



28 federal government to be their agent for certain enumerated purposes, and nothing more;

29 (b) the Tenth Amendment to the Constitution of the United States defines the total
30 scope of federal power as being that which has been delegated by the people of the several
31 states to the federal government, and all power not delegated to the federal government in the
32 Constitution of the United States is reserved to the states respectively, or to the people
33 themselves; and

34 (c) the assumption of power that the federal government has made by enacting the
35 Patient Protection and Affordable Care Act interferes with the right of the people of the state of
36 Utah to regulate health care as they see fit, and does not comply with the assurance in The
37 Federalist Papers, No. 45 (James Madison), that the "powers delegated" to the federal
38 government are "few and defined," while those of the states are "numerous and indefinite".

39 (2) The Legislature declares that the federal law known as the Patient Protection and
40 Affordable Care Act is not authorized by the Constitution of the United States and violates the
41 constitution's true meaning and intent as given by the founders and ratifiers of the constitution,
42 and is hereby declared to be invalid in this state, shall not be recognized by this state, is
43 specifically rejected by this state, and shall be considered null and void and of no effect in this
44 state.

Legislative Review Note
as of 2-28-13 6:17 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill declares that the Affordable Care Act, which was passed by Congress, signed by the President, and major portions of which were upheld as constitutional by a majority of the United States Supreme Court, is invalid and without effect in the state of Utah because it violates the true meaning of the Constitution of the United States.

The United States Supreme Court has determined that at least parts of the Affordable Care Act

are constitutional. *See Nat'l Federation of Business v. Sebelius, Sec'y of Health and Human Services*, 132 S. Ct. 2566 (2012). Specifically, the Court determined that the individual mandate and optional expansion of Medicaid was constitutional. There is a high probability that a court would rule that the state's nullification of the Affordable Care Act is without effect because a state cannot circumvent a federal court ruling. In *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958), the Supreme Court asserted that if "the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery."

The ability of the state to nullify the portions of the Affordable Care Act that have not been ruled upon by a court is uncertain. The asserted power to nullify federal statutes is largely based on the compact theory of the union which argues that the United States was formed by a compact between and agreed upon by the states. In *Bush v. Orleans Parish School Bd.*, 188 F. Supp. 916, 923 (E.D. La. 1960) aff'd, 365 U.S. 569 (1961), the court admitted that the compact theory may have had some validity when the states were operating under the Articles of Confederation, but that upon "their [the Article's] failure, however, 'in Order to form a more perfect Union,' the people, not the states, of this country ordained and established the Constitution." *Bush*, 188 F. Supp. at 923. With the disavowal by the federal courts of the compact theory, the retention by the states of the authority to nullify federal statutes is likely to be in question.

Office of Legislative Research and General Counsel